

Message Text

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PAGE 01 BELGRA 04476 141443Z
ACTION EUR-12

INFO OCT-01 ISO-00 SP-02 ICA-20 AID-05 EB-08 NSC-05
TRSE-00 SS-15 STR-07 OMB-01 CEA-01 CIAE-00 FRB-01
INR-10 NSAE-00 XMB-04 OPIC-06 LAB-04 SIL-01 PA-02
AGRE-00 INT-05 DOE-15 SOE-02 OES-07 /134 W
-----053007 150933Z /10

R 140926Z JUN 78
FM AMEMBASSY BELGRADE
TO USDOC WASHDC
INFO SECSTATE WASHDC 6908
AMCONSUL ZAGREB

UNCLAS BELGRADE 4476

DEPARTMENT PLEASE PASS TO EXIM BANK

E.O. 11652: N/A
TAGS: BTIO, YO
SUBJECT: OFFICIAL CLARIFICATION OF NEW JOINT VENTURE LAW

REF: BELGRADE 3561

1. ECON COUNSELOR RECENTLY MET WITH OFFICIALS OF FEDERAL COMMITTEE FOR ENERGY AND INDUSTRY RESPONSIBLE FOR JOINT VENTURES TO SEEK CLARIFICATION OF CERTAIN PROVISIONS OF NEW LAW. OFFICIALS WERE FORTHCOMING IN RESPONDING TO QUESTIONS AND THEIR ANSWERS TENDED TO PLACE SOME PROVISIONS IN MORE FAVORABLE LIGHT. HOWEVER, ON SEVERAL POINTS INTERPRETATION APPEARED TO GO CONSIDERABLY BEYOND ACTUAL TEXT RAISING QUESTION OF WHETHER IT WILL HOLD SWAY IN LEGAL DISPUTE OR BE SUBJECT TO SUBSTANTIAL REVISION AT SOMETIME IN FUTURE. CLARIFICATIONS WERE PROVIDED IN FOLLOWING AREAS:

A. MAXIMUM COMPENSATION FOR INVESTED CAPITAL (ART. 19). THIS WILL NORMALLY BE SET AS PERCENTAGE OF REVENUES. DETERMINATION OF WHETHER FOREIGN PARTNER'S SHARE OF INCOME EXCEEDS MAXIMUM PERMISSIBLE LEVEL WILL BE DONE ON AN ANNUAL BASIS.
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HOWEVER, JOINT VENTURE AGREEMENT MAY PROVIDE FOR CARRY OVER OF DIFFERENCE BETWEEN MAXIMUM LEVEL AND ACTUAL INCOME GENERATED FROM ONE YEAR TO NEXT SO THAT AVERAGE PERCENTAGE OVER SPECIFIED PERIOD OF TIME DOES NOT EXCEED MAXIMUM: WHILE NOT SO STATED IN LAW, OFFICIALS MAINTAINED THAT MAXIMUM COMPENSATION ALSO APPLIES TO DOMESTIC PARTNER AND THAT PROFITS OVER AND ABOVE THAT LEVEL MAY NOT BE DISTRIBUTED TO WORKERS BUT MUST

BE REINVESTED. IT IS INTENT OF LAW THAT WHEN REINVESTMENT OF EXCESS PROFITS OCCURS EQUITY OF FOREIGN AND DOMESTIC PARTNERS INCREASE BY EQUAL AMOUNTS SO THAT SHARES OF TOTAL EQUITY REMAIN SAME. FOREIGN PARTNER HAS OPTION OF REPATRIATING EXCESS PROFITS BUT THIS RESULTS IN CORRESPONDING REDUCTION IN EQUITY PARTICIPATION.

B. TAXATION OF PROFITS. AS NOTED IN REFTTEL, REFERENCE IN PREVIOUS LAW TO SEPARATE TAX ON FOREIGN PARTNER PROFITS HAS BEEN OMITTED IN NEW LEGISLATION. OFFICIALS SAID THAT NEW TAX LAW IS NOW BEING DRAFTED THAT WOULD SPECIFICALLY EXEMPT FOREIGN PARTNER FROM TAX ON HIS SHARE OF INCOME. THIS NOW AMOUNTS TO 12-35 PERCENT DEPENDING ON THE PROVINCE OR REPUBLIC. HOWEVER, UNTIL NEW TAX LAW IS PASSED, FOREIGN PARTNER MAY STILL BE REQUIRED TO PAY SEPARATE TAX ON PROFITS.

C. PROFIT REPATRIATION. OFFICIALS CLARIFIED USE OF HARD CURRENCY EARNINGS OF JOINT VENTURE FOR PROFIT REPATRIATION WHICH IS AUTHORIZED IN LAW ON FOREIGN EXCHANGE. JOINT VENTURE ENTERPRISE IS PERMITTED TO USE 50 PERCENT (100 PERCENT IN LESS DEVELOPED AREAS) OF HARD CURRENCY EARNINGS FOR TRANSFER ABROAD OF FOREIGN PARTNER'S SHARE OF PROFITS. IT WAS CONFIRMED THAT FOREIGN EXCHANGE ALLOCATION UP TO THIS AMOUNT IS GUARANTEED TO JOINT VENTURE ENTERPRISE AND IS NOT SUBJECT TO APPROVAL OF REPUBLICAN FOREIGN EXCHANGE COMMUNITY OF INTEREST AS ARE FOREIGN EXCHANGE ALLOCATIONS FOR OTHER USES.
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D. AMORTIZATION RATES (ART. 9) IT WAS EMPHASIZED THAT RIGHT OF JOINT VENTURE PARTNERS TO SET OWN STANDARDS FOR MATERIAL COSTS AND AMORTIZATION RATE IS NOVELTY IN YUGOSLAV LAW AND IS SOMETHING WHICH FOREIGN FIRMS SHOULD TAKE SPECIAL NOTE OF. PROVISION GIVES FOREIGN FIRMS ADDITIONAL MEASURE OF FLEXIBILITY IN SETTING UP JOINT VENTURE AND ASSURING OPTIMAL RETURN ON INVESTMENT.

E. IMPORT LICENSES. PRIOR APPROVAL OF IMPORT LICENSES REFERRED TO IN ART. 48 APPLIES ONLY TO RESOURCES INITIALLY INVESTED IN JOINT VENTURE ENTERPRISE AND NOT TO THOSE WHICH MUST BE SUPPLIED ON CONTINUAL BASIS FOR JOINT VENTURE PRODUCTION PROGRAM (E.G. RAW MATERIALS AND SEMI-FINISHED PRODUCTS). LICENSE FOR LONG-TERM IMPORTATION OF RAW MATERIALS OR SEMI-FINISHED GOODS FOR THIS PURPOSE CAN BE ISSUED BY FOREIGN TRADE SECRETARIAT UNDER FOREIGN TRADE LAW. SEPARATE APPLICATION MUST BE MADE TO SECRETARIAT.

F. IMPORT SUBSTITUTION. JOINT VENTURE WHICH DOES NOT PROVIDE FOR EXPORT OF PRODUCTION BUT ENVISAGES MANUFACTURE OF PRODUCTS CURRENTLY BEING IMPORTED MAY BE APPROVED BY GOVERNMENT.

APPROVAL, THOUGH, IS BY EXCEPTION ONLY AND WILL NOT BE FORTHCOMING AUTOMATICALLY.

G. AUTHORITY OF JOINT BUSINESS BOARD. THIS AREA REMAINS AMBIGUOUS. OFFICIALS WERE UNWILLING TO SPECIFY WHICH MANAGEMENT QUESTIONS LIE WITHIN SPHERE OF INALIENABLE RIGHTS OF WORKERS AND WHICH COULD BE ACTED ON BY JOINT BUSINESS BOARD. ARTICLE 5 OF 1976 SUPPLEMENTARY REGULATION DETAILED SEVEN MANAGEMENT AREAS IN WHICH BUSINESS BOARD HAD NO DECISIONMAKING AUTHORITY (E.G. INCOME DISTRIBUTION, CREDITS AND MANAGEMENT OF SOCIAL CAPITAL). SINCE THESE WERE NOT INCLUDED IN NEW LAW, EMBASSY ECON OFFICER ASKED WHETHER THIS MEANT THAT BOARD COULD NOW ACT INDEPENDENTLY IN THESE AREAS. OFFICIALS RESPONDED THAT THIS IS NOT NECESSARILY THE CASE BUT WOULD NOT GO INTO UNCLASSIFIED

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DETAIL ON LAW'S IMPLICIT RESTRICTIONS. IT APPEARS THEREFORE, THAT THE INTENT OF NEW LAW MAY NOT BE TO INCREASE MANAGEMENT RIGHTS OF FOREIGN PARTNER BUT MERELY TO RESTATE THEM IN WAY THAT IS LESS OBJECTIONABLE TO FOREIGN FIRMS. EVEN SO, FACT THAT GUIDING PROVISIONS ARE MORE GENERALLY STATED MAY GIVE JOINT VENTURE PARTNERS SLIGHTLY MORE FLEXIBILITY THAN BEFORE IN FORMULATING JOINT BUSINESS BOARD'S OPERATING PROCEDURES AND DECISIONMAKING POWERS.

2. COMMENT: COMMITTEE'S INTERPRETATION OF NEW LAW WILL BE TESTED SOON AS SEVERAL U.S. FIRMS ARE NOW IN ADVANCED STAGE OF NEGOTIATION ON JOINT VENTURE AGREEMENTS. THESE INCLUDE HONEYWELL, CANADA DRY, DE SOTO PAINTS, HESSTON AND CONSORTIUM OF MEDICAL EQUIPMENT MANUFACTURERS. INITIAL REACTION TO NEW LAW FROM REPRESENTATIVES OF THREE OF THESE FIRMS IS CAUTIOUSLY FAVORABLE. PRINCIPAL AREAS OF CONCERN ARE PROCEDURE FOR SETTING MAXIMUM LEVEL OF COMPENSATION AND SCOPE OF AUTHORITY OF JOINT BUSINESS BOARD. REPRESENTATIVES WERE UNCERTAIN HOW THESE WOULD BE WORKED OUT IN AGREEMENT. FIRST OF THESE PROSPECTIVE JOINT VENTURE AGREEMENTS IS EXPECTED TO BE SIGNED IN JUNE BY MEDICAL EQUIPMENT CONSORTIUM. EAGLEBURGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 14 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BELGRA04476
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780250-0044
Format: TEL
From: BELGRADE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780662/aaaacbnz.tel
Line Count: 158
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ffacbc89-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 BELGRADE 3561
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2364721
Secure: OPEN
Status: NATIVE
Subject: OFFICIAL CLARIFICATION OF NEW JOINT VENTURE LAW
TAGS: BTIO, YO
To: COM
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ffacbc89-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014